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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/979,569	11/19/2001	Alan Anthony Wilson	PG3707USW	3282
23347	7590	11/12/2004	EXAMINER	
DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY GLAXOSMITHKLINE FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398			HARMON, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/979,569

Applicant(s)

WILSON ET AL.

Examiner

Christopher R Harmon

Art Unit

3721

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) 26, 29-36, 63-69, 79 and 80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, 27, 28, 37-62 and 70-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/8/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 5-9, 14-17, 22-23, 27-28, 37-38, 40-43, 46, 48-50, 55-56, 61-62, 70, 73-74, 76-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Lefort (US 3,565,132).

Lefort discloses a method and apparatus for filling containers with a measured powder comprising closing off perforated 17 plate; inclined blades 20 for leveling powder into perforations/grooves, see column 2, lines 45-55; directing powder by inclined leveler blade 10; blanking plate 19; transferor 21; see figures 1-2, 5-7.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13, 39, 41, 75, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lefort (US 3,565,132).

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Regarding claims 10-13, the configuration of the leveler blade would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made.

Regarding claims 39 and 75, the containers are closed/lidded at a later operation and would have been obvious to one of ordinary skill in the art to provide for a lidding apparatus.

5. Claims 1-25, 27-28, 37-38, 40-62, and 70-74, 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dworak et al. (US 5,549,144) in view of Morris (US 4,850,259).

Dworak et al. disclose a method and apparatus for filling containers with a measured powder comprising closing off perforated plate 52; directing powder by levelers 84a, 84b, 86a, 86b; wiper 88; blanking plate 64; transferor/blanking pin 78; see figures 1 and 2.

Dworak et al. does not disclose moveable leveler blades presenting a forward acute angle however Morris teaches a powder dosing apparatus with multiple leveler blades 22 and 23 at separate depths movable across the surface of powder. The ends of the blades present forward and reverse angles to the sweeping path; see figures 2 and 3. It would have been obvious to one of ordinary skill in the art to use the teachings of Morris in the invention to Dworak et al. in order to level the powder over the perforated plate.

Regarding claims 52 and 54, the examiner takes Official Notice that leveler blade either curved or with a flat tail section solves no stated problem and would be an obvious matter of design choice within the skill of the art.

***Response to Arguments***

6. Applicant's arguments filed 9/15/04 have been fully considered but they are not persuasive.

Lefort provides multiple inclined leveler blades for leveling the powdered product into and out of perforations in a plate, the bottom of which is closed.

Regarding Dworak and Morris, applicant argues that plows and wipers do not perform a leveling function therefore the combination would not be obvious to one of ordinary skill. This is not persuasive because a plow and/or wiper performs the same function that a leveler does only perhaps at a specific height. By mixing and steering products in a particular direction Dworak discloses distributing the products uniformly or leveling.

In response to applicant's argument that the combination is untenable, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The common knowledge modification in above paragraph 5 is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of official notice.

Regarding the lack of unity argument presented, the independent claims do not avoid the prior art; see above. The restriction is thereby proper and the finality is maintained.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EUGENE KIM  
PRIMARY EXAMINER